

**STATEMENT OF CHRISTOPHER K. JARVI, ASSOCIATE DIRECTOR
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OUTDOOR RECREATION, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF
THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, OF THE
HOUSE COMMITTEE ON RESOURCES, CONCERNING H.R. 4581, TO AMEND THE
NATIONAL TRAILS SYSTEM ACT RELATING TO THE STATUTE OF
LIMITATIONS THAT APPLIES TO CERTAIN CLAIMS**

July 13, 2006

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 4581, to amend the National Trails System Act relating to the statute of limitations that applies to certain claims.

The National Park Service and the U.S. Department of Justice would like the opportunity to further evaluate and discuss H.R. 4581 with the many interested Federal agencies. We have been advised by the U.S. Department of Justice that, after such discussions, it plans to send a report to the Committee that will include a position on the bill.

The National Park Service is aware that, prior to the Federal Circuit's ruling in the Caldwell case, there was some confusion created by court rulings on the date when the Statute of Limitations began for rail-to-trail takings cases. In the Caldwell v. United States case concerning a railroad easement right-of-way in the state of Georgia, the plaintiffs alleged that they were the fee owners of land that was burdened by a railroad easement and that the railbanking and interim trail use of this right-of-way under the Trails Act constituted a taking of their property. Both the U.S. Court of Federal Claims (the trial court) and the U.S. Court of Appeals for the Federal Circuit ruled that the statute of limitations for the Caldwell plaintiffs' Trails Act takings claim had expired. However, the two courts ruled differently for establishing when the statute of

limitations started to run. The trial court ruled that two events are necessary for a Trails Act takings claim to accrue: (1) the Surface Transportation Board (STB) must issue its decision (the Notice of Interim Trail Use or “NITU”) authorizing railbanking, and (2) the railroad and qualified trail sponsor must reach a trail use agreement pursuant to that authorization. The appeals court found the triggering event to be when the STB issued the NITU because that decision forestalled the abandonment proceedings and precluded any state law reversionary interests from taking effect. In 2006, the Federal Circuit reaffirmed the Caldwell ruling in *Barclay v. United States*, holding that the issuance of the original NITU triggers the accrual of the cause of action.

H.R. 4581 would amend the National Trails System Act to state that the claims for damages shall not begin to accrue until a State, political subdivision, or qualified private organization has by written agreement assumed full responsibility for the right-of-way and interim use of that right-of-way, and that the railroad has conveyed in writing an interest in the right-of-way to the same parties by donation, transfer, lease, sale, or otherwise.

In 1983, Congress recognized the continuing need to preserve linear transportation corridors and the demand for trails by amending the National Trails System Act (NTSA) to include a “railbanking” clause. Railbanking is defined as the preservation of a railroad corridor for future rail use. Railbanking is accomplished under the NTSA through provisions that allow a railbanked corridor to be used for interim trail use purposes through a voluntary agreement reached between a railroad and a trail manager. In Section 8(d) of the NTSA, the Secretary of the Interior is asked to encourage state and local groups to develop trails on railroad rights-of-

way in order to protect and keep these corridors intact in case they are needed for rail service in the future. Section 8(d) also facilitates the development of rail-trail corridors that provide both high-quality recreational opportunities and serve transportation needs.

In cities, these rail-trail corridors benefit the citizens by serving as transportation corridors, providing safe and easily accessible commuting areas for bikers and walkers, helping to mitigate our urban traffic problems and pollution. The conversion of rail-trail corridors has the additional benefit of attracting tourism dollars to communities that have lost income through the disuse of the railroad. Rail-trail corridors attract people to these areas, who in turn spend money on recreational equipment, food, and lodging as they use these trails.

Rail-trail corridors provide important recreational and energy-efficient transportation opportunities throughout the United States. However, it is important to provide a process that will insure just compensation is provided to private property owners when railbanking and interim trail use authorized under the NTSA results in a taking of private property.

That concludes my testimony. I would be happy to answer any questions you or other members of the subcommittee may have.